

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

HARRY GARCIA,

Appellant,

v.

THE STATE OF OKLAHOMA,

Appellee.

NOT FOR PUBLICATION

Case No. F-2014-312

~~MSDC--WDOK~~

§ 2254-Petitioner

Exhibit C

FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

JUL 28 2015

SUMMARY OPINION

JOHNSON, JUDGE:

MICHAEL S. RICHIE
CLERK

Appellant Harry Garcia was tried by jury in the District Court of Oklahoma County, Case No. CF-2013-2987, and convicted of Murder in the First Degree, in violation of 21 O.S.2011, § 701.7. The jury assessed punishment at life imprisonment with the possibility of parole. The Honorable Ray C. Elliott, who presided at trial, sentenced Garcia accordingly.¹ Garcia appeals, raising the following issues:

- (1) whether the trial court's refusal to instruct the jury on his theory of defense violated his fundamental right to present a defense and right to due process.
- (2) whether the evidence was sufficient to support his conviction;
- (3) whether the trial court's refusal to instruct the jury on the lesser related offense of second degree murder violated his right to due process and requires reversal; and
- (4) whether the cumulative effect of all the errors deprived him of a fair trial and warrants a new trial or a sentence modification.

¹ Under 21 O.S.2011, § 13.1, Garcia must serve 85% of the sentence imposed before he is eligible for parole.

We find reversal is not required and affirm the Judgment and Sentence of the district court.

1.

Because the evidence presented at trial did not support the requested defense instructions there was no error in the trial court's refusal to give the requested instructions. *See Barnett v. State*, 2011 OK CR 28, ¶ 6, 263 P.3d 959, 962; *Grissom v. State*, 2011 OK CR 3, ¶ 35, 253 P.3d 969, 982.

2.

Any rational trier of fact could find beyond a reasonable doubt that Garcia committed the crime of first degree murder based on the evidence presented in this case. *See Logsdon v. State*, 2010 OK CR 7, ¶ 5, 231 P.3d 1156, 1161; *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, 203-204. The evidence was sufficient to sustain Garcia's conviction.

3.

The evidence presented at trial did not support the requested instructions on the lesser offense of second degree murder. There was no error in the trial court's decision not to give these instructions. *Jones v. State*, 2006 OK CR 17, ¶ 6, 134 P.3d 150, 154.

4.

There are no errors, considered individually or cumulatively, that merit relief in this case. *Jones v. State*, 2009 OK CR 1, ¶ 104, 201 P.3d 869, 894;

DeRosa v. State, 2004 OK CR 19, ¶ 100, 89 P.3d 1124, 1157. This claim is denied.

DECISION

The Judgment and Sentence of the district court is **AFFIRMED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (2014), the **MANDATE** is **ORDERED** issued upon delivery and filing of this decision.

AN APPEAL FROM THE DISTRICT COURT OF OKLAHOMA COUNTY
THE HONORABLE RAY C. ELLIOTT, DISTRICT JUDGE

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OPINION BY: JOHNSON, J.
SMITH, P.J.: Concur
LUMPKIN, V.P.J.: Concur
LEWIS, J.: Concur
HUDSON, J.: Concur

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